THE CERTIFICATE PROCEDURE MANUAL,

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COMPRISING

THE PUBLIC DEMANDS RECOVERY ACT, VII (B.C.) OF 1880,

AND

THE RULES, &c, RELATING TO IT.

PUBLISHED UNDER THE AUTHORITY OF THE BOARD OF REVENUE, L.P.

CALCUTTA:

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PREFACE.

THIS Manual is to a great extent a reprint of that issued in 1885. The corrections since then have not been numerous; but, as it is intended to include the Certificate Procedure as a part of some of the Manuals now under preparation on other subjects, the opportunity has been taken to bring this Manual up to date, and to republish it separately.

MR. REYNOLDS.

2. The Act VII (B.C.) of 1880 has been introduced into this compilation for easy reference. Notes have been added to some sections of the Act containing decisions of the Board, &c., in references made to them.

3. This Manual has never been included as a Chapter of a Volume of the Board's Rules. But it is to be distinctly understood that it is issued under the authority of the Board, and that it is incumbent on all Revenue officers to be guided by the rules contained in it. Errors and omissions should be brought to the notice of the Board.

4. This Manual may be briefly cited as "The Certificate Procedure Manual, 1888." It is interleaved with blank pages for the propose of inserting any additions or alterations made subsequent to its issue.

BOARD OF REVENUE, L.P.,
The 15th March 1888.

C. E. BUCKLAND,
Offg. Secretary.

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ACT VII (B C.) OF 1880.

(Received the assent of the Lieutenant-Governor on the 22nd April 1880, and of the Governor-General on the 26th June 1880.)

An Act to amend the law for the recovery of certain Public Demands.

WHEREAS it is expedient to amend the law for the recovery of certain dues and debts demandable by Public Officers: It is hereby enacted as follows:—

Preamble.

Short Title.

1. This Act may be called "The Public Demands Recovery Act, 1880."

Extent.

Notwithstanding anything contained in section 2, it extends to all the territories for the time being administered by the Lieutenant-Governor of Bengal.

Commencement.

It shall come into operation on and after the date on which it shall be published in the *Calcutta Gazette* with the assent of the Governor-General.

Construction of this Act.

2. This Act, so far as is consistent with the tenor thereof, shall be construed as one with Act XI of 1859, passed by the Governor-General in Council, and Act VII of 1868, passed by the Lieutenant-Governor of Bengal in Council. The powers given by this Act shall be deemed to be in addition to, and not in derogation of, any powers conferred by any Act now being in force for the recovery of any due, debt, or demand to which the provisions of this Act are applicable.

Repeal of Acts in Schedule.

3. The Acts specified in the first Schedule annexed to this Act are hereby repealed from and after the commencement of this Act, to the extent specified in the third column of that Schedule: provided that this repeal shall not affect—

(*a*) the past operation of any enactment hereby repealed, nor anything duly done or suffered thereunder:

(*b*) any liability created under any enactment hereby repealed.

Certificate under Bengal Act VII of 1868 to be enforced under this Act.

Every Certificate made under the provisions hereby repealed of Act VII of 1868, passed by the Lieutenant-Governor of Bengal in Council, may be enforced under the provisions of this Act.

Definitions.

4. In this Act, unless the context otherwise requires, but not in the other Acts mentioned in section 2—

"Section."

"Section" means a section of this Act.

"Collector" means (*a*) within the local limits of the ordinary original jurisdiction of the High Court of Judicature at Fort William in Bengal, the Collector of Calcutta; (*b*) without those limits, the Collector of a District or any officer specially appointed by the Lieutenant-Governor to perform the functions of a Collector under this Act; and (*c*) any officer in charge of a Sub-division of a district whom the Collector of such district, with the sanction of the Commissioner, authorizes to perform such functions as aforesaid.

"Collector."

Note 1.—"Under section 7 the "Collector of the District" is empowered to make a certificate, &c., &c. Collector in the Act means the Collector of the District, or any officer specially appointed by the Lieutenant-Governor to perform the functions of a Collector under this Act [see (*b*) of section 4]. Any officer specially authorized to act as a Collector is therefore a Collector, and as a Collector is a Collector of the District; it follows that an officer specially authorized &c., &c., is a Collector of the District within the meaning of this Act, and can make certificates under section 7." [Opinion of the Hon'ble the Advocate-General, dated 1st March 1882, in which the Legal Remembrancer agreed.]

See also the note to section 19.

Note 2.—"A Collector exercising powers under the Certificate Procedure is not a Judicial authority under clause 3 of section 5 of Act XI of 1859." [Opinion of the Hon'ble the Advocate-General, dated 14th January 1884, in Board's Miscellaneous Proceedings of 16th February 1884, No. 149, Collection 7, File 3010.]

5. In the following cases, that is to say—

When an estate or tenure has been sold for its own arrears, and the sale-proceeds are insufficient to liquidate the same; or

(1) when, under the provisions of Act XI of 1859, passed by the Governor-General in Council, or of Act VII of 1868, passed by the Lieutenant-Governor of Bengal in Council, an estate or tenure has been sold for the recovery of arrears of revenue due thereupon, and, after deducting the expenses of such sale, the balance of the sale-proceeds remaining is insufficient to liquidate the arrears of revenue in discharge of which such sale-proceeds may under the aforesaid provisions be applied;

when arrears of revenue due from a farmer are not paid on latest date of payment.

(2) when arrears of revenue due from a farmer on account of an estate held by him in farm are not paid on the latest day of payment fixed under the provisions of section 3 of Act XI of 1859, passed by the Governor-General in Council;

The Collector of the district may make a certificate of the unpaid arrears.

the Collector may make under his hand, and in form No. 1 in the second Schedule annexed to this Act, a certificate of the amount of arrears so remaining unpaid, and may cause the same to be filed in his office.

Such certificate shall have the force and effect of a decree of a Civil Court as regards the remedies for enforcing it.

6. (*a*) Subject to the provisions of this Act, every certificate made under the provisions of section 5 shall, as regards the remedies for enforcing the same and so far only, have the force and effect of a decree of a Civil Court, and the Secretary of State for India in Council shall be deemed to be the decree-holder, and the person therein named as debtor shall be deemed to be the judgment-debtor.

(*b*) Such judgment-debtor may, at any time within one year after the service upon him of such notice as is mentioned in section 10, bring a suit in the Civil Court to have the said Certificate cancelled on the ground that the arrears stated therein were not due by him; but no such suit shall be entertained unless such judgment-debtor has paid such arrears to the Collector within one month after being served with the said notice, or, in any case in which he has filed a petition of objection under section 12, then within fifteen days after such petition has been heard and determined.

Judgment-debtor may bring a suit in the Civil Court to contest his liability, if he has deposited the amount of the Certificate.

(*c*) If no such suit is instituted within the said period of one year, or if any such suit, having been so instituted, is decided against such judgment-debtor, such Certificate shall become absolute, and shall have to all intents and purposes the effect of a final decree of a Civil Court.

If no such suit brought within one year, or if brought and decided against judgment debtor, the Certificate to become absolute, and have effect of a decree of the Civil Court to all intents and purposes.

7. When any arrears of the following Public Demands are unpaid by the person liable to pay the same, that is to say—

When any arrear of a Public Demand is unpaid by the person liable to pay the same.

(1) any sum of money which by any law for the time being in force is declared to be recoverable or realizable as an arrear of revenue or land revenue, or by the process prescribed for the recovery of arrears of revenue or of the public or Government revenue:

(2) any sum of money due from the sureties of a farmer in respect of the revenue of the estate farmed by him:

(3) any such demand, money, fee, duty, arrear, fine, or costs as is mentioned in the following sections of the following Acts passed by the Lieutenant-Governor of Bengal in Council, that is to say—in Act VIII of 1862, section 9; in* Act VI of 1873, section 50; in Act IV of 1875, section 1; in Act V of 1875, section 57; in Act III of 1876, section 42, section 73, and section 85; in Act VII of 1876, section 82; in Act VIII of 1876, section 138; in Act VII of 1878, section 36; or in the following sections and portions of the following Act passed by the Governor-General in Council, that is to say—in Act VII of 1870, "The Court Fees' Act," sections 19G, 19H, and the note to paragraph 12 of Schedule I:

* Repealed by Act II (B.C.) of 1882 see section 70 of that Act

(4) in the case of a person to whom the collection of tolls has been farmed under the provisions of section 8 of "The Canals Act, 1864," or of the sureties of such person—any sum of money due in respect of such farm:

(5) in the case of a person having charge of a ferry subjected to the payment of a yearly rent—any arrear of such rent ascertained and certified as provided in Regulation VI of 1819, section 10:

(6) any arrears of revenue or rent payable to the Secretary of State for India in Council from any ryot, or from any person holding any interest in land pasturage, forest rights,

fisheries, and the like, whether such interest is or is not transferable:

(7) in the case of property which, under the provisions of any law for the time being in force, has been taken under the charge of, or is managed by, the Court of Wards or the Revenue Authorities on behalf of a private individual—any arrears of rent or of other demands recoverable as rent, whether such arrears became due before or after the management devolved upon such Court or such Authorities; provided that this clause shall not apply to any arrears of rent at an enhanced rate, unless such enhanced rate has been agreed to by the person liable to pay the same, or has been confirmed by a competent Court:

(8) any sum payable to a Public Officer of Government in respect of which the person liable to pay the same has agreed by a written instrument duly registered that it shall be recoverable under the provisions of this Act:

(9) any fee, duty, tax, or other demand, which by any Act passed hereafter shall be declared to be recoverable under the provisions of this Act;

the Collector of the district may make under his hand, and in form No. 2 in the second Schedule annexed to this Act, a Certificate of the amount of such arrears so remaining unpaid, and may cause the same to be filed in his office: provided that no such Certificate shall be made in respect of any such demand, the recovery of which is barred by any law of limitation for the time being in force.

The Collector of the district may make a Certificate of the unpaid demand.

Note to clauses (6) *and* (7).—In (*a*) trust estates managed by Government as express trustee, arrears of rent are recoverable under clause (6) of section 7. In (*b*) attached estates managed by the Revenue Authorities on behalf of private individuals, arrears of rent are recoverable under clause (7) of section 7 The Act does not apply to rents of houses and shops, and the Certificate Procedure cannot be applied to the recovery of such rents (Board's Wards' Proceedings of 16th February 1884, No. 34, Collection 10, File 672.)

Note 1 *to clause* (7).—With reference to the wording of this clause there is no necessity for the Board to notify the latest days of payment of rent due to wards' estates. (Board's Wards' Proceedings of 7th August 1880, No. 245, Collection 9, File 2113.)

Note 2 *to clause* (7).—The Legal Remembrancer has given an opinion that a fine imposed under section 58A of Act IX (B.C.) of 1879 cannot be properly levied by the Certificate Procedure. (Board's Miscellaneous Proceedings of 19th November 1887, No. 151, Collection 7, File 447.)

8. (*a*) Subject to the provisions of this Act, every Certificate made under the provisions of section 7 shall, as regards the remedies for enforcing the same, and so far only, have the force and effect of a decree of a Civil Court. In the cases other than case (7) mentioned in the said section 7, the Secretary of State for India in Council and in the said case (7) the private individual therein mentioned, or, if such private individual be a Minor, Lunatic or Ward of Court, then such Minor, Lunatic, or Ward of Court by his next friend, shall be deemed to be the decree-holder, and in all the cases mentioned the person therein named as debtor shall be deemed to be the judgment-debtor.

Such Certificate shall have the same effect as a decree of a Civil Court, as regards the remedies for enforcing the same.

(*b*) Such judgment-debtor may at any time within one year after the service upon him of such notice as is mentioned in section 10 bring a suit in the Civil Court to contest his liability to pay the amount stated in the said Certificate, and to have such Certificate cancelled: but no such suit shall be entertained unless such judgment-debtor has stated in a petition presented to the Collector under section 12 the ground upon which he claims to have such Certificate cancelled, or unless, having omitted to state such ground in such petition as aforesaid, he can satisfy the Civil Court that there was good reason for such omission. If no such suit is instituted within the said period of one year, or if any such suit having been instituted is decided against such judgment-debtor, such Certificate shall become absolute, and shall have to all intents and purposes the same force and effect as a final decree of a Civil Court.

Judgment-debtor may bring a suit in the Civil Court to contest the Certificate. If no such suit within one year, or if brought and decided against the judgment-debtor, Certificate to become absolute.

Provided that no Certificate duly made under the provisions of this Act shall be cancelled by a Civil Court otherwise than on one or more of the following grounds, that is to say:—

(1) that the amount stated in the Certificate was actually paid or discharged before the making of such Certificate:

(2) in the case of fines imposed, or costs, charges, expenses, damages, duties or fees adjudged, by a Collector or a Public Officer under the provisions of any Regulation or Act for the time being in force—that the proceedings of such Collector or Public Officer were not in substantial conformity with the provisions of such Regulation or Act, and that in consequence the judgment-debtor under the Certificate suffered substantial injury from some error, defect or irregularity in such proceedings:

(3) in cases other than those mentioned in clause (2)—that the amount stated in the Certificate was not due by the judgment-debtor under the Certificate:

(4) want of jurisdiction.

Nothing in this proviso shall be construed to interfere with the ordinary original jurisdiction of the High Court at Fort William in Bengal, or with the jurisdiction of the Calcutta Court of Small Causes.

9. (*a*) When any arrear of any of the public demands specified in section 7 is unpaid by any person liable to pay such public demands to a Public Officer other than a Collector, or when any such demand as is specified in clause (7) of the said section is unpaid by any person liable to pay the same to a Manager appointed by the Court of Wards, such Officer or such Manager may give to the Collector of the district, in which such person resides, or in which such demand is payable, a notice in writing in form No. 3 in the second Schedule annexed to this Act: provided that no such notice may be given in respect of any such demand, the recovery of which is barred by any law of limitation for the time being in force.

In case of arrears of public demand payable to Officer other than Collector, such Officer may give notice to Collector.

Note.—The Board have declined to make a rule that, when the Manager of a ward's estate is subordinate to one Collector only, that Collector should countersign the Manager's notices of demand addressed under this Act to another

Collector. Such countersignature, it was said, would be apt tc degenerate into a mere act of routine.—(Board's Wards' Proceedings of 23rd July 1881, No. 144, Collection 9, File 2734.)

(*b*) Every such notice given by a Manager shall be verified by such Manager in accordance with the provisions of the Code of Civil Procedure as to the verification of plaints, and there shall be payable in respect thereof a Court-fee of the same amount as is payable under the Court-fees' Act for the time being in force in respect of a plaint for the recovery of a sum of money equal to that stated in such notice.

Such notice given by a Manager to be verified and stamped as a plaint.

(*c*) On receipt of such notice, such Collector, if satisfied that such demand is justly recoverable, may make under his hand, and in the form No. 2 in the second Schedule annexed to this Act, a Certificate of the amount of such arrears so remaining unpaid, and shall cause the same to be filed in his office.

Collector may on receipt of such notice make a Certificate.

(*d*) The provisions of section 8 shall apply to every such Certificate.

10. When a Certificate has been filed in the office of a Collector under the provisions of section 5, or section 7, or section 9, such Collector shall issue to the judgment-debtor a copy of such Certificate and a notice in form No. 4 in the second Schedule annexed to this Act. From and after the service of such notice, such Certificate shall bind all immoveable property of such judgment-debtor situate within the jurisdiction of such Collector in the same manner and with like effect as if such immoveable property had been attached under the provisions of section 274 of the Code of Civil Procedure. A copy of such Certificate may be transmitted by post to any other Collector for the purpose of being filed in his office, and as soon as it is so filed, such Certificate shall, if the aforesaid notice has been served, bind in like manner all immoveable property of such judgment-debtor situate within the jurisdiction of such last mentioned Collector.

When Certificate filed, notice to be given to judgment-debtor. Upon service of notice, Certificate to bind immoveable property of judgment-debtor.

Copy of Certificate may be sent to Collector of another district to be filed in his office, and upon its being filed, Certificate shall bind immoveable property situate in such district

Note.—The issue of a certificate against the proprietor of an estate does not operate to exempt the estate from sale under clause 2 of section 17, Act XI of 1859.—(Board's Miscellaneous Proceedings of 19th December 1885, No. 27, Collection 7, File 388)

11. If in any case other than the case mentioned in clause (7) of section 7, the Collector is satisfied that any person against whom a Certificate has been filed under the provisions of section 5, or section 7, or section 9,is likely to conceal, or remove, or dispose of the whole or any part of his moveable property, and that the realization of the amount of such Certificate will in consequence be delayed or obstructed, he may at any time after making such Certificate direct an attachment of the whole or any part of the moveable property of such person. Such attachment shall be made in the manner provided in the Code of Civil Procedure for attaching moveable property, and subject to the provisions of section 266 of the same Code. Such property may be sold for the purpose of satisfying such Certificate, if no petition of

Moveable property of person against whom Certificate has been made, may be attached at any time, if Collector satisfied that such person is likely to conceal, remove, or dispose of such property.

objection is filed under section 12, or if any such petition is filed, then as soon as it has been heard and determined.

Any person served with notice under Section 10 may le a petition of objection.

12. If any person, who has been served with a notice under section 10, denies his liability to pay the whole or any part of the amount for which such Certificate has been made and filed against him, he may at any time within thirty days after service of such notice, or, where no such notice has been duly served, within thirty days after the execution of any process for enforcing such Certificate, file a petition denying his liability as aforesaid, before the Collector by whom such certificate has been made. Such petition shall be in, or as nearly as possible in, the form No. 5 in the second Schedule annexed to this Act.

Note.—A reference being made to the Board whether a petition under this section or any other petitions presented in course of the trial of a case should bear court-fee stamps as provided in No. 1 (*a*) and (*b*) of Schedule II of the Court-fees Act, 1870, or should bear a stamp of 8 annas as laid down in 1 (*b*) of that schedule, the Board ruled that the stamping of petitions under this Act should be regulated according to No. 1 (*a*) and (*b*) of Schedule II of the Court-fees Act, 1870.—(Board's Miscellaneous Proceedings of 4th September 1880, No.29, Collection 7, File 2471).

Day to be fixed for hearing such petition. Collector to determine the liability of the petitioner Certain provisions of the Code of Civil Procedure to apply to the inquiry.

13. Such Collector shall fix a day for hearing any such petition so filed, and upon such day, or any subsequent day to which such hearing may be adjourned, shall determine whether such petitioner is liable for the whole or any part of the amount for which such Certificate was made, and may set aside or modify or vary the Certificate accordingly. Every such Collector shall, for the purpose of hearing any such petition and determining as aforesaid, exercise all or any of the powers of a Civil Court in respect of summoning, causing the attendance of, and examining witnesses, and in respect of causing the production of documents; and the provisions of the Code of Civil Procedure applicable to these matters shall apply to a Collector exercising these powers.

Collector may direct costs of such petition to be paid by the petitioner. Such costs how realized.

14. The Collector shall have full power to direct that the costs of such petition and of the hearing thereof shall be paid by the petitioner, and in any case in which a Collector directs the payment of such costs by any such petitioner, the amount thereof shall, if such petitioner be the judgment-debtor, be added to the amount entered in the Certificate, and shall be recoverable as if the same had been originally entered therein.

Note.—The Collector has full power to deal with the question whether the costs of authenticated copies of documents filed in cases and travelling allowances of witnesses produced by parties should be allowed and treated as costs of the case.—(Board's Miscellaneous Proceedings of 4th September 1880, No. 29, Collection 7, File 2471).

Collector may refer petition for hearing to Deputy Collector, Assistant Commissioner, &c, who shall have the same powers to hear it as the Collector.

15. The Collector of a district may refer to any Deputy Collector or Assistant Commissioner or Extra Assistant Commissioner subordinate to him, any such petition as is mentioned in section 12, and such Deputy Collector or Assistant Commissioner or Extra Assistant Commissioner shall hear and determine such petition accordingly. The provisions of sections 13 and 14 shall be applicable to any such Deputy Collector or

Assistant Commissioner or Extra Assistant Commissioner to whom and such petition has been so referred.

Appeal from Deputy Collector, Assistant Commissioner, &c., to Collector, and from Collector to Commissioner Stay of execution.

16. An appeal from any order of a Deputy Collector or Assistant Commissioner or Extra Assistant Commissioner may be preferred to the Collector within fifteen days, and an appeal from any original order of a Collector may be preferred to the Commissioner within thirty days after the making of such order respectively. Pending the decision of such appeal, execution may be stayed, if the Appellate Authority so direct, but not otherwise.

Note 1.—Parties preferring appeals under this section are required to file with their memorandum of appeal a copy of the decision appealed against, authenticated in the manner laid down in the Board's Rules.—(Board's Miscellaneous Proceedings of 4th September 1880, No. 29, Collection 7, File 2471).

Note 2.—A memorandum of appeal from the orders passed by a Certificate Deputy Collector in regard to certificates filed for arrears of rent should bear an *ad valorem* stamp under article I, Schedule I, of the Court-fees Act VII of 1870. (Board's Miscellaneous Proceedings of 10th March 1888, No. 256, Collection 7, File 100).

Power of revision.

17. There shall no appeal, as of right, lie from any order of a Collector passed on appeal from an order of a Deputy Collector or Assistant Commissioner or Extra Assistant Commissioner; but the Commissioner may, in any case in which he thinks fit, revise any order passed by a Collector or Deputy Collector or Assistant Commissioner or Extra Assistant Commissioner.

Certificate may be enforced after one month from notice, or when petition of objection disposed of.

18. Every Certificate made under the provisions of section 5, or section 7, or section 9, may be enforced and executed, upon the expiry of one month after service of the notice mentioned in section 10, or when any such petition as is mentioned in section 12 has been filed, then as soon as such petition has been heard and determined.

Certificate may be enforced under the provisions of the Code of Civil Procedure as a decree for money.

19. Such Certificate may be so enforced and executed by all or any of the ways and means mentioned and provided in and by the Code of Civil Procedure for the enforcement and execution of decrees for money, and all the practice and procedure provided by the said Court of Civil Procedure

in respect of sales in execution of decrees; in respect of raising the amount of a decree otherwise than by sale of immoveable property under the provisions of sections 305, 320, 322, 323, and 324 of the said Code; in respect of arrests in execution of decrees for money; in respect of the execution of decrees by imprisonment; in respect of insolvent judgment-debtors; in respect of claims to attached property; in respect of resistance to execution; and in respect of the execution of decrees out of the jurisdiction of the Courts by which they were passed,

shall apply to every execution issued to enforce such Certificate and realize the amount recoverable thereunder, save that all the duties, powers, and authorities by the said Code imposed or conferred on the Court shall be exercised by the Collector in whose office any such Certificate, or any copy thereof transmitted for execution under the pro-

"be stamped with a court-fee of eight annas under article 11 (*a*), Schedule II," 8-6-92.

visions of section 223 of the said Code, has been filed. Subject to the control of the Collector, and save and except in respect of the provisions relating to insolvent judgment-debtors, any of the said duties, powers, and authorities may be exercised by any Deputy Collector, Assistant Commissioner, or Extra Assistant Commissioner subordinate to such Collector.

Note 1.—The Board were asked (1) whether officers are justified in arresting a debtor in a certificate case without warrant on non-satisfaction of the amount of the certificate from the property attached, and (2) whether a Certificate Deputy Collector is competent to refer certificates to Sub-divisional Officers or other Deputy Collectors for execution under section 19 of this Act, or whether the Collector's own orders are required in such cases. They replied to (1) that "no arrest without warrant is allowed by the Civil Procedure Code which governs the execution of a certificate," and to (2)—"When a Deputy Collector has been specially appointed by the Lieutenant-Governor under section 4 (*b*) of Act VII (B.C.) of 1880, he has the powers of the Collector of the District throughout the Act inclusive of the last clause of section 19 and of section 15, *i.e.*, a Certificate Deputy Collector is competent to refer certificates to Sub-divisional Officers or other Deputy Collectors for execution, and the Collector's own orders are not required in such cases. The word "Collector," as defined in section 4 of Act VII (B.C.) of 1880, means the Collector of the District or any officer specially appointed by the Lieutenant-Governor to perform the functions of a Collector under the Act. There is not in this Act a special definition for "Collector of District" as there is in the Cess Act IX (B.C.) of 1880, and it may be inferred that when an officer is vested with the powers of a Collector under Act VII (B.C.) of 1880, Collector means the Collector of the District as under the definition." (Board's Miscellaneous Proceedings of 30th July 1887, No. 281, Collection 7, File 236.)

See also the note to section 4.

Note 2.—A question having arisen whether a Sub-Deputy Collector or other subordinate at a sub division could be empowered to conduct sales for enforcing certificates under this Act during the absence of the Sub-divisional Officer from head-quarters, the Board replied that this section of the Act provides that the Collector of a District shall exercise (in respect to the execution of certificates) all the duties, powers and authorities which the Code of Civil Procedure imposes or confers on the Court in respect of the execution of decrees. The Board added "one of the powers of the Court under section 286 of the Civil Procedure Code is that of appointing any person whom it may think proper to conduct a sale. The power of appointing a person to conduct sales in execution of certificates is therefore conferred on the Collector by section 19 of the Public Demands Recovery Act, and, by the last clause of the section, this power may be exercised subject to the control of the Collector by any Deputy Collector, Assistant Commissioner or Extra Assistant Commissioner subordinate to him. The 'power' in question, of which the exercise is restricted to the officers here specified, is not that of actually conducting the sale, but of appointing a person to conduct the sale. And in the exercise of this power the Sub-divisional Officer is competent to appoint the Sub-Deputy or any other person he may think fit to conduct such sales." (Board's Miscellaneous Proceedings of 15th January 1881, No. 281, Collection 7, File 2624.)

Sale of immoveable property may be set aside, if Certificate is set aside by a competent Court. Proviso.

20. If any immoveable property is sold in execution of a Certificate under the provisions of section 18, and if such Certificate is subsequently set aside by a competent Court, such Court may set aside such sale of such immoveable property, and in any case in which such sale is so set aside, such Court shall direct that the amount of the purchase-money be refunded to the purchaser with or without interest, as such Court thinks fit: provided that no such sale shall be so set aside unless such purchaser has been made or added as a party to the suit brought to set aside such Certificate

21. Every Collector shall cause to be kept in his office a Register in such form as may from time to time be prescribed by the Board of Revenue, and shall cause to be entered in such Register the particulars of every Certificate made under this Act, which, or a copy of which, has been filed in his office. Such Register shall be open during office hours to the inspection of any one desiring to inspect the same, and a fee of eight annas, or such fee not exceeding eight annas as the Board of Revenue may prescribe, shall be chargeable for such inspection.

Register of Certificates to be kept in Collector's office and to be open to inspection on payment of fee of eight annas.

22. (*a*) Payment of the amount due under a Certificate may be made by instalments, if the Collector who made such Certificate so direct. The payment of any instalment shall be entered in the Register mentioned in section 21.

Payment of sum due under a Certificate may be made by instalments. Payment of instalments to be entered in Register.

(*b*) When the total amount due under a Certificate has been paid and satisfied, the Collector in whose office such Certificate was originally filed shall enter satisfaction upon such Certificate under his hand and signature; and shall cause the same to be entered in the Register mentioned in section 21.

When total amount satisfied, Collector to enter satisfaction on Certificate and in Register;

(*c*) When a copy of such Certificate has been transmitted to another Collector, or when such Certificate has been made under the provisions of section 9 upon notice from a Public Officer other than a Collector or from a Manager appointed by the Court of Wards, such satisfaction shall be communicated to such other Collector or to such Officer, or to such Manager.

and to communicate it to other Collector in whose office a copy of such Certificate has been filed.

(*d*) When a sum has been levied or received by a Collector in respect of a Certificate, a copy of which has been transmitted to him and filed in his office, such Collector shall send such sum to the office in which such Certificate was originally made.

Sum levied by Collector to whom copy of Certificate sent to be transmitted to Collector who made Certificate.

23. Every Collector, Deputy Collector, Assistant Commissioner and Extra Assistant Commissioner and every such Public Officer as is mentioned in section 9 shall, in the discharge of his functions under this Act, be deemed to be a person acting judicially within the meaning of Act XVIII of 1850, passed by the Governor-General in Council.

Collector, Deputy Collector, Assistant Commissioner, Extra Assistant Commissioner and Public Officer to be deemed to be acting judicially in the discharge of his duties under this Act.

24. All Collectors, Deputy Collectors, Assistant Commissioners, and Extra Assistant Commissioners shall, in the performance of their duties under this Act, be subject to the general supervision and control of the Commissioners of Divisions and the Board of Revenue.

Collectors, &c., to be subject to the supervision and control of Commissioners and Board in discharge of their duties under this Act.

Note.—The Board have ruled that the fees chargeable for serving and executing processes issued under this Act should be levied according to the rules and scale laid down in the Board's Rules in respect of the levy of fees in Executive revenue processes.—(Board's Miscellaneous Proceedings of 4th September 1880, No. 29, Collection 7, File No. 2471, and of 11th October 1884, No. 171, Collection 10, File 6).

Note.—A Manager under the Court of Wards having occasion to inspect a Certificate Register is to be required to pay the fee under this section (Board's Miscellaneous proceedings of 20th September 1890, No. 265, Collection 7, File 332). 1-2-91.

FIRST SCHEDULE—*See* section 3.

Number and year.	Subject of Act.	Extent of repeal.
	Acts passed by the Lieutenant-Governor of Bengal in Council.	
VIII of 1862 ...	An Act to improve the system of zemindari dâks in the Provinces subject to the Government of Bengal.	In section 9 the words from and including "which said double amount" to and including "making default."
VII of 1868 ...	An Act to make further provision for the Recovery of Arrears of Land Revenue and Public Demands recoverable as Arrears of Land Revenue.	In section 1 from and including the words "The word 'demand' means" to the end of the section. In section 2 the words "not being a sale made under, and by virtue of, any execution issued upon a certificate made as hereinafter is provided." In section 6 the words "or persons liable to any demands," "or persons," "or any demands," "or persons," "or to any demands," "or persons," and "or of such demands." Sections 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28.
VI of 1873 ...	An Act to amend the law relating to Embankments and Water-courses.	Section 50, from and including the words "under the provisions" to the end of the section.
I of 1875 ...	An Act for the Realization of Arrears in Government Estates.	The whole Act.
IV of 1875 ...	An Act to provide for the summary realization of sums due on account of loans made by the Government during the late famine operations.	Section 1, from and including the words "within the meaning" to the end of the section.
V of 1875 ...	An Act to provide for the Survey and Demarcation of Land.	In section 57 from and including the words "under section 2" to the end of the section.
III of 1876 ...	An Act to provide for Irrigation in the Provinces subject to the Lieutenant-Governor of Bengal.	In section 42, from and including the words "under the provisions" to the end of the section. In section 73, from and including the words "under the provisions" to the end of the section. In section 85, from and including the words "under the provisions" to the end of the section.
VII of 1876 ...	An Act to provide for the Registration of Revenue-paying and Revenue-free lands, and of the proprietors and managers thereof.	In section 82, from and including the words "under section" to the end of the section.
VIII of 1876 ...	An Act to make better provision for the Partition of Estates.	In section 138, from and including the words "under section" to the end of the section.
VII of 1878 ...	An Act to consolidate and amend the law relating to the Excise Revenue in the Presidency of Fort William in Bengal.	In section 36, from and including the words "or by the process" to the end of the section.
IX of 1879 ...	An Act to amend the law relating to the Court of Wards.	Section 63.
	Regulations of the Bengal Code.	
III of 1794 ...	A Regulation for exempting proprietors of land (with certain exceptions) from being confined for arrears of revenue; and for prescribing the process by which tehsildars are to demand payment of arrears; and for enabling the Collectors to recover from Native officers employed under them public money or papers which they may embezzle or retain, &c.	Section 12. Sections 16, 17, 18, 19, and 20, so far as they relate to the recovery of money belonging to Government.

SECOND SCHEDULE.

FORM No. 1 (*See* section 5).

Certificate of Arrears of Revenue filed in the Office of the Collector of the District of (name of District.)

No. of Certificate.	Name of Debtor.	Address of Debtor.	Amount of Arrears of Revenue for which this Certificate is made, and period for which such arrears are due.	Estate or tenure for which Arrears of Revenue due.

I hereby certify that the above-mentioned sum of Rs. is due to the Secretary of State for India in Council from the above-named.

Dated this day of 18 . A. B.

Collector of

FORM No. 2 (*See* sections 7 and 9).

Certificate of Arrears of Public Demands filed in the Office of the Collector of the District of (name of District.)

No. of Certificate.	Name of Debtor.	Address of Debtor.	Amount of the Public Demand for which this Certificate is made.	Particulars of Public Demand for which this Certificate is made; and Public Offices [*or* Manager, *and* of what estate] to whom due.

I hereby certify that the above-mentioned sum of Rs. is due to the Secretary of State for India in Council [*or* to A B. a Ward of Court, *or* a Minor, *or* a Lunatic, by his next friend B. D.] from the above named

Dated this day of 18 A. B.

Collector of

FORM No 3 (*See* section 9).

NOTICE OF DEMAND.

To the Collector of the District of

Name of Debtor.	Address of Debtor.	Amount of Public Demand for which this Notice is given.	Nature of the Public Demand for which this Notice is given.

The above sum of Rs. is due from the said in respect of

Certified this day of A. B.

FORM No. 4 (*See* section 10)

NOTICE.

To (*Insert name of judgment-debtor*).

You are hereby informed that a Certificate for Rs. due from you on account of has been this day made by me against you under the provisions of Section of Act of 1880 passed by the Lieutenant-Governor of Bengal in Council, and that such Certificate has been filed in this office. If you deny your liability to pay the said sum of Rs. you may within thirty days show cause why such Certificate should not be executed. If you fail to show cause within thirty days, or do not show sufficient cause, such Certificate will be executed in the same manner as if it were a decree of a Civil Court for the said sum of Rs. unless you pay the amount into this office. Until such amount is paid, you are hereby prohibited from alienating your immoveable property or any part of it by sale, gift, mortgage, or otherwise.

A copy of the Certificate above-mentioned is hereto annexed.

Dated this day of 18 A. B.

Collector of

FORM No. 5 (*See* section 12).

To

THE COLLECTOR OF THE DISTRICT OF

The humble petition of (*name of petitioner*) of (*address*).

SHEWETH—

That a Certificate No for the sum of Rs. has been filed against your petitioner in your office under the provisions of section of Act of 1880 passed by the Lieutenant-Governor of Bengal in Council.

That your petitioner respectfully denies his liability to pay the said sum of Rs. (or, where the liability to pay part is admitted, denies his liability to pay more than Rs.), and this for the following reasons :—

That the facts above stated are true to the best of your petitioner's knowledge and belief.

Your petitioner therefore respectfully prays that the said Certificate may be set aside (*or* modified *or* varied).

RULES UNDER THE PUBLIC DEMANDS RECOVERY ACT.

N.B.—Throughout these rules, unless it appears otherwise from the context, the words "the Act" mean the Public Demands Recovery Act, VII (B.C.) of 1880.

Section I.—Delegation of Powers to Deputy Collectors.

1. The Lieutenant-Governor having approved of a proposal made by the Board to relieve District Officers of the burden which has hitherto been imposed on them of making under their own hands certificates of arrears under the Act, by specially appointing an officer in each district to perform the functions of a Collector under the Act as contemplated by clause (*b*), section 4, the annexed instructions are issued for the guidance of Collectors, of officers so specially appointed, and of others concerned in working the Act. A list of the demands falling under sections 5 and 7 of the Act is given in Appendix A. An explanatory extract from the communication* which the Board addressed to Government on the subject is annexed in Appendix B.

Appointment of special officers as Collectors.

* No. 267A, dated 29th April 1882, paragraphs 3 to 12 inclusive.

2. District Officers should submit the names of the Deputy Collectors whom they would propose to be specially empowered, and in doing so the grounds of selection should be stated. The officer nominated should ordinarily be an experienced Deputy Collector, on whose judgment reliance can be placed.

Nomination of Deputy Collectors.

3. The effect of an officer being specially appointed by the Lieutenant-Governor to perform the functions of a Collector under the Act as mentioned in section 4, is* to vest him with the following powers, which the Collector could not have authorised him to exercise without such special appointment :—

Effect of specially appointing officers as Collectors.

* This is also applicable to the authorisation of a Sub-divisional Officer by the Collector of the district, with the sanction of the Commissioner, to perform the functions of a Collector.

(1) To make certificates under his hand in accordance with sections 5, 7, and 9 of the Act, and to issue copies thereof with notices under section 10.

(2) To direct attachment of moveable property under section 11 immediately after a certificate is made.

(3) To receive petitions of objections under section 12 denying liability to pay the whole or any part of the amount for which a certificate has been made and filed, and to hear, determine, and deal with such petitions under sections 13 and 14, or to refer them under section 15 to any other Deputy Collector for hearing and determination.

(4) To exercise the powers referred to in section 19 in execution of certificates in respect of insolvent debtors.

(5) To hear appeals from any orders of Deputy Collectors.

4. The Collector of a district may in any case which comes to his notice (either on reference from the certificate officer or in any other way) direct that the certificate be not issued, or that its issue be postponed until he has arrived at a determination about it. 3-7-88.

Powers conferred how to be exercised.

These appear to be the only powers which a Deputy Collector, who has been duly authorised in that behalf by the Collector, either by a special order (section 15), or in the general distribution of work (section 19), may not exercise.

Powers conferred to be exercised subject to restrictions.

4. Although an officer may be specially appointed by the Lieutenant-Governor to perform the functions of a Collector under the Act, in order to relieve the Collector personally of much of the work connected with the administration of the Act, the Board direct that the legal powers conferred on any officer by such appointment shall be exercised subject to restrictions and instructions as follows:—

Orders of Collector of district necessary in certain cases prior to making of certificate.

5. No certificate for recovery of a demand of any of the following classes shall be made under the Act otherwise than under an express order of the Collector of the district directing that such a certificate be made for the recovery of a specified amount against the person named in such order:—

(1) Any sum recoverable from a surety.

(2) Any sum recoverable from a public accountant, Act XII of 1850, section 4.

(3) Any sum due from an officer in respect of his employment under the Court of Wards' Act IX (B.C.) of 1879, section 46

(4) Expenses incurred by the Court of Wards on account of any property under its charge, if to be recovered after the release of such property from the charge of the Court, Act IX (B.C.) of 1879, section 65A.

(5) Fines imposed under section 4, Regulation VI of 1825, for neglect to supply provisions, &c., for troops.

(6) Sums due as court-fees on probate and letters-of-administration under the Court-fees Act VII of 1870, sections 19G, 19H, and the note to paragraph 12 of schedule I.

SECTION II.—THE FUNCTIONS OF THE REQUIRING DEPUTY COLLECTOR AND CERTIFICATE OFFICER.

Requisition from Requiring Officer on the Certificate Officer.

1. Whenever any Deputy Collector or other public officer authorised to issue the notice under section 9 of the Act (to be hereafter designated the Requiring Deputy Collector or Officer) considers that any demand, which it is the business of such officer to realise, should be recovered under the provisions of the Act, he shall make a requisition on the Collector or Deputy Collector (to be hereafter designated the Certificate Officer) who is authorised to make a certificate under his hand.

Accompaniments of requisition.

2. The requisition shall be accompanied by a statement in form No. 2 of the second schedule annexed to the Act which, when signed by the Certificate Officer may become the original certificate made under his hand and filed in the Collector's office.

Form of requisition in certain cases.

3. If the requisition be for a certificate for the recovery of any arrear of the classes specified in article 2, clause (*b*), section 8 of the Act, it shall be in the briefest form; but in addition to the above statement a copy of the order of the competent authority by whom the realization of the arrear was ordered shall be annexed

Certificate how to be made

4. On receipt of such requisition the Certificate Officer shall (in the absence of any obvious reason to the contrary) make the certificate under his hand by formally signing the draft form sent to him by the Requiring Deputy Collector.

Responsibility of Requiring Deputy Collector.

5. If the arrear be of any other class of demand than those specified in the said article 2, clause (*b*) of section 8, the Requiring Deputy Collector shall, in his requisition, state whether there is any reason to doubt that the person against whom it is sought to take out the certificate will admit his liability to pay the amount specified, or any part of it, with a brief explanation of the circumstances of the case. The Requiring Deputy Collector will be held responsible that this duty is performed carefully and intelligently, and not as a matter of routine.

Duty of Certificate Officer.

6. On receipt of such application the Certificate Officer before making the certificate shall—(1) satisfy himself in a general way that the demand is justly recoverable; (2) consider whether the arrear is one which, under all the circumstances of the case, should be recovered by the summary procedure of the Act.

7. If the Certificate Officer is so satisfied, and does so consider but not otherwise, he shall make the certificate.

and of Requiring Officer

8. In case of such refusal, the Requiring Officer may apply to the Collector to make such certificate.

Petition of objection to be referred to Requiring Officer.

9. Whenever any person shall, as provided in section 13, deny his liability to pay the whole or any part of the amount for which a certificate has been made against him, the Certificate Officer shall ordinarily, under section 15, refer the petition of objection for hearing and determination to the Requiring Officer, ~~subject, however, to the exceptions~~ specified in the ~~next~~ clause.

Exceptions.

10. In the following cases the Certificate Officer shall not refer a petition of objection to liability, presented under section 12 of the Act, to the Requiring Deputy Collector for hearing and determination, but shall refer such petition to the Collector for such order as he may think proper:—

Objection to liability to pay the amount for which the certificate is made, if the demand is on account of—

(1) any of the matters specified in rule 5, Section I of these Rules;
(2) rent, whether in a Government or a Ward's estate, if the question of the amount of rent payable in any year by the person against whom the certificate has been issued is involved;
(3) balance of revenue due, which has not been realised by sale of the estate, Act VII (B.C.) of 1880, section 5, clause I;

"Provided always that the Requiring Officer is a Deputy Collector or Assistant Commissioner, or Extra Assistant Commissioner, as described in Section 15 of the Act. In all cases it is open to the Certificate Officer to call for a report on the case from the Requiring Officer." 2-8-88.

"1A. Sales of moveable property not exceeding Rs. 20 in value shall be held on the spot, as provided in rule 1 of the Rules made by the High Court and issued with their Circular No. 19 of the 28th April 1879 (*vide* page 22 of this Manual). Such sales will necessarily be conducted by peons when they are the attaching officers. Sales of moveable property of greater value may be held on the spot or at the Sadar or subdivisional head-quarters, as may seem convenient and conducive to the securing of good prices. For such sales officers of higher rank than peons should always be deputed when the value of the property is estimated to exceed Rs. 50, and proclamation should be issued. When the value is between Rs. 20 and Rs. 50, the Collector or Deputy Collector may by a special order depute a peon, if he considers it desirable to do so.

Sale of moveable property

"1B. Sales of immoveable property should ordinarily be held at the district or subdivisional head-quarters, according as the villages may be nearer to either, but sales on the spot are desirable when bids or sufficient bids cannot be obtained at head-quarters. It sometimes happens that it is only by holding sales in the villages that the property can be disposed of. When this is the case nazirs, naib-nazirs or bakshis should be employed ; but in rare instances, where the value of the property is very small and the cost of deputing a higher officer would be out of proportion to it, a trustworthy peon may be sent out under the special orders of the Collector or Deputy Collector. For all sales of immoveable property proclamation must be issued.

Sale of immoveable property.

"1C. Sales of estates or shares of estates should always be held at the district or subdivisional head-quarters.

Sale of estates or shares of estates

"1D. In order to ensure a good attendance of bidders and fair bids, it is desirable that regular sale days, whether one or more in the month, should be fixed, and that lists of property to be put up at each sale should be published some days in advance. This arrangement cannot, perhaps, be made ordinarily at subdivisions, where sales are few and far between, but it should be introduced where the sales are sufficiently numerous and regular." 12-8-93.

Procedure for ensuring a good attendance of bidders and fair bids.

(4) advances under the Land Improvement Loans Act, XIX of 1883, section 7, and under the Agriculturists Loans Act, XII of 1884, section 5;
(5) Opium advances under Act XIII of 1857, section 16;
(6) water-rates for irrigation, Act III (B.C.) of 1876, sections 42, 73, and 85;
(7) the sum payable in respect of improved or reclaimed lands under a drainage scheme. Act VI (B.C.) of 1880, sections 26 and 38;
(8) embankment expenses, Act II (B.C.) of 1882, section 70;
(9) famine loans, Act IV (B.C.) of 1875, section 1;
(10) a sum made recoverable under the Act by special contract, Act VII (B.C.) of 1880, section 7, clause 8;
(11) cesses recoverable from shareholders in estates by their registered co-sharers, Act IX (B.C.) of 1880, section 49.

11. Every officer who hears and determines on a petition of objection shall give notice of his decision to the Certificate Officer, with copy of the proceedings, setting out the grounds thereof; whereupon the Certificate Officer—(1) may order that the certificate remain in force, or that it be modified or varied in accordance with the determination of the petition of objection by the Requiring Officer; or (2) if he be not satisfied that the certificate proceedings should continue, may refer the case to the Collector, whereupon the Collector shall pass such orders as he may think fit.

Procedure subsequent to disposal of objection.

12. No officer, although specially appointed by the Lieutenant-Governor to perform the functions of a Collector under the Act, shall exercise the appellate powers of a Collector under the Act unless he is expressly authorised in that behalf by the vesting order; and unless the contrary shall be expressly specified in such order, every such officer shall exercise his functions subject to the control of the Collector of the district, and subject to appeal to the Collector of the district, as if he were not so specially appointed to exercise the functions of a Collector.

Appellate powers of officers specially appointed:

Control of Collector.

SECTION III.—MISCELLANEOUS.

1. The effect of the service of notice under section 10 of the Act is conclusively to bind all immoveable property of the judgment-debtor situated within the jurisdiction of the Collector concerned, in the same manner and with like effect as if such immoveable property had been attached under the provisions of section 274 of the Code of Civil Procedure (Act XIV of 1882). It is therefore superfluous to take out a second attachment before sale for enforcing the certificate under section 19 of the Act.

Effect of service of notice.

2. The attention of Collectors and other officers entrusted with the working of the Act is called to the ruling of the High Court in the case Rakhal Chandra Rai Chaudhuri *versus* the Secretary of State for India in Council at page 603, volume XII of the Indian Law Reports, in which

Method of service of notice.

the Honourable Judges held that "although no special provision is made "in Bengal Act VII of 1880 as to the manner of service of the notice "prescribed in section 10, it is not to be presumed that the Legislature "intended that service of a less effectual character should be sufficient than "it has expressly provided for similar processes under the Civil Procedure "Code. Before, therefore, a service under Bengal Act VII of 1880 can "be effected by posting it on the residence of the party on whom it is "wished to serve it, it must be shown that some attempt has been made "to effect personal service, and that such personal service for reasons "stated could not be made.

"In such a case when the fact of service of notice is denied, the "onus is on the party alleging service to prove it."

3. Though the mode of service is not specially provided for in the Act, it appears to be prescribed by section 5 of Act VII (B.C.) of 1868. Under that section service is primarily to be effected by delivering the copy of the notice to the person to whom it is directed, or to some adult male member of his family, and it is only when the notice cannot be served in either of these ways, that it is permissible to serve it by posting the copy on some conspicuous part of his house.

Validity of certificate.

4. A certificate once made by a Collector remains valid as a decree against the debtor, until it is either legally set aside or fully satisfied, or until the execution of it has become barred under the law and rules applicable to the execution of decrees of the Civil Court. Repeated executions may be had on it, but it will still remain valid for what may still remain due. A certificate should, therefore, continue to be borne on the pending files and the registers of the Collector's office until it has ceased to be effective for one or other of these reasons.

Recovery of costs and interest.

5. The recovery of costs and of any interest which may be due on the certificate must, for the purpose of this rule, be considered on the same footing as the recovery of the sum due on the body of the Certificate. Such items must be realised before the demand due on the certificate can be said to be fully discharged.

Clearing of pending files.

6. As a mere matter of office convenience, a Collector may clear his registers by striking off the pending file any certificate which is for the recovery of an amount of which the abandonment or remission has been formally sanctioned by competent authority whether as an irrecoverable balance or otherwise.

Transmission of certificate to other districts.

7. When the debtor resides in a district other than that of which the Collector has made the certificate and filed it in his office, the Collector making such certificate should transmit to the Collector of the district in which the debtor resides a copy of the certificate, together with the notice in form No. 4, referred to in section 10 of the Act, and with request that he will cause them to be served of the debtor.

To bind property in other districts.

8. If the Collector making the certificate desires to bind any property of the debtor situate in another district, he should send a separate copy of the certificate, with a request that it be filed in the office of the Collector of such district under section 10.

Note 2.—The Legal Remembrancer, on a reference made to him by the Board, has advised that a Collector cannot in working the Certificate Procedure award costs to a successful objector, there being no provision on the subject of costs in Act VII (B.C.) of 1880, except that contained in section 14, which refers only to the award of costs against, and not in favour of, objectors. 2-2-90.

"NOTE.—On a reference made to the Legal Remembrancer, he has advised that interest falling due after a certificate has been made cannot be included in it, and, therefore, cannot be realised under it." 3-8-89.

"This opinion has since been confirmed by the Officiating Advocate-General." 1-11-92.

"The Legal Remembrancer, on a reference made to him by the Board, has advised that certificates made for rent due to Wards' and Government estates are governed, as regards the question of limitation, by Schedule III, Part III, Act VIII of 1885. Save, therefore, in the special cases mentioned in that Section, no application for execution of a certificate can be received after three years from the date on which the certificate was made, and certificates must be struck off after that period if no execution proceedings are pending. If, however, an application for execution is made before the expiration of the three years, the proceedings for executing the certificate can be carried on after the three years until completion." 8-12-91.

Remission of costs.

"5A. The cost of realization in some instances, to which the attention of the Board has been drawn, appeared to be very excessive by comparison with the amount of the original demand. To prevent the recurrence of this abuse, Collectors are authorized at their discretion to remit any portion of the fees which they find to be unreasonable with reference to all the circumstances of a particular case. They will state annually in their reports on the Public Demands Recovery Act how this discretion has been exercised, giving at the same time a statement of cases, if any, in which the cost of recovery has been more than double the original demand.

Postponement of the issue of certificates.

"5B. In the case of regularly recurring demands (such as Road Cess, Public Works Cess, Zemindari Dâk Cess, &c.), when there is reason to believe that a trifling default at one kist may be made good at the next, a Collector is authorized, in his discretion, to postpone the issue of a certificate on the occurrence of the demand." 1-6-89.

A // " for Government demands." 10-9-92.

" 11A. As remittances of sums realised under Act VII (B.C.) of 1880 are made for a *bonâ fide* public purpose, such sums are to be transmitted by means of remittance transfer receipts by the Collectors of the districts in which they are paid to the Collectors of the districts in which the sums are finally to be credited. No charge or fee is to be realised from the payer on this account." 5-3-91.

Rules as to transfer receipts.

13. The value of court-fee stamps, as well as any other recoverable costs which the requiring Collector may notify to the executing Collector to have been incurred in the case of notices for recovery of cesses served in districts other than that in which the certificates are made, should be recovered and remitted by the executing Collector with the amount of cess or other demand connected therewith included in the certificate.

Process fees and costs in cess cases.

13A. In all cases the court-fee stamps are to be affixed to the application for issue of processes and not to the processes themselves. An endorsement should be made on the processes, certifying that the fees have been paid, and the applications should be retained in the receiving court or office. 1-7-88.

Court-fee stamps to be affixed to and remain with the application in all cases.

9. In sending the copy of the certificate to be filed in another Collector's office, the Collector making the certificate should state whether the notice in form No. 4 has been served on the debtor.

Copies to be sent to other districts.

10. When the Collector making a certificate desires that it should be enforced and executed by another Collector under section 19 of the Act, he should send for that purpose copy of the certificate made under the Act, together with a certificate under clause (*b*), section 224 of the Code of Civil Procedure (Act XIV of 1882). If a copy of the certificate under the Act has already been filed in the office of such other Collector, it will be unnecessary to send another copy of it for the purpose of execution. In such cases it will be enough to send the certificate under section 224 of the Code, and to make a reference to the copy of the certificate under the Act which was previously transmitted for the purpose of being filed.

Cost of serving notice.

11. As regards the cost of serving notices and of executing certificates in districts other than that in which the certificate was made, it appears sufficient to point out that the Collector actually executing the process should defray the cost of service, and credit in his own district the recoveries on account of such costs. It is probable that on an average the transactions of one district for another will balance themselves so nearly as not to require the introduction of any special rule on this account

In cases of application made by Manager.

12. In cases under section 63 of Act IX (B.C) of 1879, the costs incurred by the Manager of the estate, that is to say, the value of the court-fee stamp affixed to the application made by the manager to the Collector under section 9 of Act VII (B.C.) of 1880, as well as any other costs advanced by the Manager for the execution of the certificate, will be recovered and remitted along with the amount of arrears of rent included in the certificate.

Process fees and costs.

13. The following is the course to be adopted in respect of the realization of process fees and costs in the case of notices for recovery of cesses served in districts other than that in which the certificates are made:—

(*a*) In the districts in which District Road Cess Committees still exist,—in the case of certificates made on behalf of the District Road Cess Committee, the court-fee stamps, which are given in by the District Committee in payment of process fees to the Collector to whom the Committee apply for execution of the certificate, are to be sent on by that Collector to the Collector on whom he calls to execute the process.

(*b*) In the districts in which District Road Cess Committees no longer exist—the court fee stamps in payment of process fees are to be sent by the Requiring Collector to the Collector on whom he calls to execute the process.

In both (*a*) and (*b*), the value of such court-fee stamps, as well as any other recoverable costs which the Requiring Collector may notify to the Executing Collector to have been incurred (in case of (*a*) by the

District Committee, in case of (*b*) by himself) in connection with the making of the certificate, should be recovered and remitted by the Executing Collector, with the amount of cess or other demand connected therewith included in the certificate.

Certificates for the recovery of rents due to wards' estates.

14. A certificate under clause 7 of section 7 of the Act for the recovery of rents due to wards' estates is made by the Collector, acting as a Court, but exercising a special and summary jurisdiction. The Collector acting as a Court is not required by law to enforce a certificate unless moved to do so. He is apparently required by section 10, without any special application being made to him, to issue a notice to the judgment-debtor, but he takes no further steps than this, except on the application of the person who is deemed by law to be the decree-holder.

Certificate not cancelled by release of estate.

15. A certificate under the article abovementioned is made for the benefit of the person whose property is under the charge of the Court of Wards at the time when the certificate is made. There is no provision in the law that upon the release of the estate the certificate shall be cancelled; it must, therefore, be regarded as still in force, even though the person for whose benefit it was made may have passed out of the jurisdiction of the Court of Wards.

Who may move the Collector.

16. The Collector may, therefore, be moved to enforce a certificate (1) by the Manager under the Court of Wards, or (2) by the person for whose benefit the certificate was made. The costs incurred in enforcing the certificate must be borne by the estate or by the released proprietor, as the case may be; and if the Collector think fit, he may require that the sum necessary shall be supplied in advance.

No pecuniary burden to be thrown on Government.

17. It must be borne in mind that the extension of the certificate procedure to the recovery of rent arrears in wards' estates was never meant to throw any pecuniary burden on the Government.

Manager to report to Collector realisation under a certificate.

18. Under section 258 of the Civil Procedure Code (Act XIV of 1882) a decree-holder is bound to certify to the Court all payments made out of Court, and all adjustments, in whole or in part, in satisfaction of the decree; and as a certificate under Act VII (B.C.) of 1880 may, under section 19 of that Act, be enforced and executed in the same way as a decree for money is enforced and executed under the Civil Procedure Code, the Manager of a Court of Wards' estate, when any payment is made to him of any money payable under a certificate, or when any adjustment of any amount due under such certificate has been made with his consent, should report the fact to the Collector as provided in section 258 of the Civil Procedure Code. It is not sufficient for the Manager to pay the amount into the treasury, for the Collector, as a Court, is not bound to take cognizance of such payment.

Manager's report to be stamped.

19. The Manager's report to the Collector should bear a stamp of one anna if the amount covered by the certificate is less than fifty rupees (Art. 1 (*a*), Schedule II, Act VII of 1870), and eight annas in any other case (Art. 1 (*b*), *idem*).

"He should, however, when delay occurs on the part of managers in applying for further proceedings, call upon them to state whether they wish to proceed further with the certificates, and, if so, to make the requisite application and file lists of property to be attached. Should the managers still fail to push the cases on, he should bring the matter to the notice of the Collector."

4-12-91

NOTE.—On a reference made to the Legal Remembrancer, he has expressed an opinion that applications for the execution of certificates filed on behalf of a minor under the Court of Wards are saved by section 7, Act XV of 1877, *i.e.*, the execution proceedings will not be barred until the ordinary time of limitation has expired after the minor has attained his majority.

11-8-91.

" 22A. The Collectors should not allow certificates to issue in cases where questions of right or title are concerned. When such questions arise, the Revenue Courts are at once to set aside the certificate under section 13 of Act VII (B.C.) of 1880." 3-6-89.

Certificates not to be issued where questions of right or title are concerned.

" It has been brought to the notice of Government that certificates are in some districts filed in excessive numbers, and for demands which would probably have been amicably realized had the claim been brought to the notice of the defaulter. Great caution should be used in the issue of certificates, which are a suitable method for the recovery only of demands of which the debtor was previously cognizant, and which he has neglected to pay in due course." 1-6-89.

" Every defaulter, whose cognizance of the demand there may be reason to doubt, has been duly warned before the report of his name to the Collector." 10-2-94.

" But in the case of arrears of cesses due from revenue-paying estates, a list of defaulters should always be put up after the expiry of each kist." 10-2-94.

20. Under the old and present cess law alike, all persons who are jointly holders of an estate are jointly and severally liable for the payment of the whole cess. It is in the discretion of the Collector to enter upon the certificate the names of any one or more of the joint-holders he may think proper: he is not bound to enter the names of all the holders. The certificate must, however, be precise, and specify the names of the person or persons against whom it is issued. It is not competent to the Collector to omit all mention of names, and describe the judgment-debtor in general language as holder of the estate. A certificate can only be executed against the persons named therein and upon their property. If the Collector recovers cess from any one shareholder in an estate, in excess of the amount proportionate to the interest of such shareholder in the estate, such shareholder can avail himself of the remedies indicated in sections 48 and 49 of the Cess Act, IX (B.C.) of 1880. Although this discretionary power of selection has been vested by the law in the Collector, as being essential to the practical working of the law, it is a power which must be exercised with much caution and sound judgment in each case to prevent hardship as far as possible.

Powers as to recovery of cess from joint-holders of estates.

The Collector should refuse to allow certificates to issue against one or more selected shareholders in an estate in respect of which cess is due, until he is satisfied that the officer in immediate charge of the cess has acted judiciously in electing not to proceed against all the recorded shareholders, and that his selection of shareholders to be proceeded against has been made on sufficient grounds.

The right of selecting the debtor against whom he will proceed, which is reserved to the Collector in these cases, is no more than the law allows to every judgment-creditor in execution of a decree.

It is probable that a judicious exercise of the Collector's discretion in this matter will effect a considerable reduction of the ultimate cost of the proceedings to the defaulters, as well as of work connected with the realisation of the cess.

21. To obviate hardship, District Officers are directed to notify the existence of arrears before certificates are issued—(*a*) by putting up a list of defaulters in their offices, and (*b*) by sending warnings to defaulters by printed post-cards (see Appendix C), in all cases in which there is no reason to believe that the debtor has had intimation of his liability. In the cases of road-cess and zemindari dâk-cess collections, this procedure will probably be unnecessary, except in the rare instances in which the amount of the demand has recently been changed.

Notice of existence of arrears to be given prior to issue of certificates.

22. At the same time it must never be forgotten that the certificate procedure is not to be looked upon as the normal method of collecting the dues of Government. The officer responsible for the collections will in all cases be expected to show to the satisfaction of the Collector that he has done his best to realise the amount by ordinary means, and that defaulters have been duly warned before the report of their names to the Collector.

Certificate procedure not to be resorted to as a matter of course.

23. The object of the extension of the certificate procedure to wards' estates is to facilitate collections, and to do this by dispensing with every step between the filing of the plaint and the making of the

Certificates not to be filed indiscriminately in the case of wards' estates.

"25. The Requiring Officer and Certificate Officer are jointly responsible for the punctual disposal of certificate cases, and are bound to bring to each other's notice and, if necessary, to the notice of the Collector any undue delay. The Requiring Officer is primarily responsible for systematic application for certificates, the prompt disposal of objections when referred to him, the return of the files after such disposal, and the early application for execution, with the details of the property against which the decree is to be enforced. He is also responsible for punctually reporting all payments out of Court as prescribed in Rule 18. Similar responsibility attaches to the Managers of Government and Wards' Estates, except as regards the disposal of objections. The Certificate Officer is responsible for seeing that no delay occurs in the certificate office, that certificates are promptly made as soon as applied for, objections at once referred to the proper quarter for disposal, and execution ordered as soon as application is made with the necessary information. He must also remind the officer who applied for the certificates when the period of limitation is approaching, and must see that cases are regularly struck off the file when duly satisfied in full or barred by limitation.

Responsibility of Requiring Officer and Certificate Officer for prompt disposal of certificate cases.

26. Certificate cases should be divided into heads, with separate registers, *e.g.*, Road Cess, Wards' Estates, Government Estates, Embankments, Water-rates, &c, with a residuary head of Miscellaneous. No general rule specifying all the heads can be provided for all districts, as where certificates are numerous in any one department, it should have a separate register, and where few, they should be included under Miscellaneous. It will, as a rule, be found convenient to have separate registers Nos. 9 and 10 for each head, and in some cases, at the discretion of the Collector, for each large Government or Wards' estate.

Certificate cases to be divided into heads.

27. Care should be taken to deal with the cases of each head, as far as practicable, group by group, in the order of institution. The files in each Mohurir's charge should, therefore, be, as a rule, sorted and arranged in this order, and be kept in bundles of convenient size, each bundle containing the cases of a quarter, half-year, or year, as the case may be. When the number of cases under any one head is so large that inconvenience will arise from keeping them in the order of institution, the Collector may at his discretion have the files arranged according to the stage reached, the date of institution regulating the order of arrangement of the files at each stage.

Order of disposal.

28. Each Mohurir should keep himself thoroughly informed of the stage which the cases have reached, and submit them punctually to the Certificate Officer immediately the time for passing further orders has arrived; and the orders must be carried out promptly when passed.

Duty of Mohurirs.

29. The Certificate Officer should at least once in every week make an inspection of the work in the hands of each Mohurir, and satisfy himself that the rules as to systematic disposal of files are duly observed. He should particularly satisfy himself that the old certificates are not overlooked or neglected.

Inspection by Certificate Officer.

30. When certificates are ready for final disposal, through satisfaction of the demand or otherwise, or are to be struck off, the final order should be passed without delay and the cases at once removed from the pending bundles." 4-12-91.

Final disposal of certificates.

does not exceed twenty rupees in value, he shall inform the debtor, or, in his absence, any present adult member of his family, that it will be sold by public auction at once, without the issue of any proclamation under section 287. In case the decree-holder or the judgment-debtor, or any person on his behalf, objects to the adoption of the course, the attaching officer will convoke a punchayet of not less than three respectable adult male inhabitants of the neighbourhood, of whom ordinarily the headman of the village should be one, and will require them to assess the value of the property. If they determine that it exceeds Rs. 20 in value, he shall deal with it under the rules framed by the Lieutenant-Governor of Bengal, otherwise he shall forthwith proceed to sell it by auction, after giving such reasonable notice, as the circumstances of the case admit of, to intending purchasers.

II.—At the time of making an application under section 230, Act XIV of 1882, for the attachment of moveable property in the possession of the judgment-debtor, the decree-holder shall pay into Court the costs of issuing the proclamation of sale under section 287 of the Act, unless the value of the property, the attachment of which is applied for, is alleged by him not to exceed Rs. 20 in value. In this case, should the value of the property, as determined by the above rule, be found to exceed Rs. 20, the Court shall require the decree-holder to pay the costs of the proclamation immediately on receipt of notice of attachment.

4. The following are the rules referred to in the above clause made by the Lieutenant-Governor of Bengal under section 269 of the Code for the maintenance and custody, while under attachment, of live-stock and other moveable property above the value of twenty rupees:—

Maintenance and custody of live-stock and other moveable property under attachment.

I.—The attaching officer shall give the debtor, or, in his absence, any present adult member of his family, the option of having the attached property kept on his premises, or in some other place in the village, on condition that a suitable place for its safe custody be provided by him.

II.—If no such suitable place be provided, the officer shall remove the property to the Court at the decree-holder's expense. In the event of the decree-holder failing to provide the necessary funds, the attachment shall be withdrawn.

III.—Whenever attached property is kept at the place where it is attached, the officer shall forthwith report the fact to the Court, and shall, with his report, forward an accurate list of the property seized, such that the Court may thereon at once issue the proclamation of sale prescribed by section 287.

IV.—If the debtor shall give his consent in writing to the sale of the property without awaiting the expiry of the

term prescribed in section 290, the officer shall receive the same and forward it without delay to the Court for its orders.

V.—When property is removed to the Court, it shall be kept by the nazir on his own sole responsibility in such place as may be approved by the Court. If the property cannot, from its nature or bulk, be conveniently kept in the Court premises, or in the personal custody of the nazir, he may, subject to approval by the Court, make such arrangements for its safe custody under his own supervision as may be most convenient and economical, and the Court may fix the remuneration to be allowed to the persons, not being officers of the Court, in whose custody the property is kept.

VI.—When property remains at the place where it is attached, in the custody of the attaching officer, and any persons other than the judgment-debtor shall claim the same, or any part of it, the officer shall nevertheless, unless the decree-holder desires to withdraw the attachment of the property so claimed, remain in possession, and shall direct the claimant to prefer his claim to the Court.

VII.—If the decree-holder shall withdraw an attachment, or if it shall be withdrawn under Rule II or Rule IX, the attaching officer shall inform the debtor, or in his absence, an adult member of his family, that the property is at his disposal.

In the absence of any person to take charge of it, or in case the officer shall have had notice of claim by a person other than the judgment-debtor, the officer shall, if the property has been moved from the premises in which it was seized, replace it where it was found at the time of seizure.

VIII.—Whenever live-stock is kept at the place where it has been attached, the judgment-debtor shall be at liberty to undertake the due feeding and tending of it, under the supervision of the attaching officer; but the latter shall, if required by the decree-holder, and on his paying for the same, at a rate to be fixed by the District Judge, and subject to the orders of the Court under whose orders the attachment is made, engage the services of as many persons as may be necessary for the safe custody of it.

IX.—In the event of the judgment-debtor failing to feed attached live-stock, the officer shall call upon the decree-holder, either to pay for feeding it on the spot, or for the expenses attending its removal to the Court. If the decree-holder shall fail to provide for either, the officer shall report the matter to the Court without delay.

X.—When attached live-stock is brought to Court, the nazir shall be responsible for the safe custody and proper feeding of it so long as the attachment continues.

XI.—If there be a Government pound in or near the place where the Court is held, the nazir shall be at liberty to place in it such attached live-stock as can be properly there kept, in which case the pound-keeper will be responsible for the property to the nazir, and shall receive the same rates for accommodation and maintenance thereof as are paid in respect of impounded cattle of the same description.

XII.—If there be no pound available, or if in the opinion of the Court it be inconvenient to lodge the attached live-stock in the pound, the nazir may keep it in his own premises, or he may entrust it to any person selected by himself and approved by the Court. The nazir will in all cases remain responsible for the custody of the property.

XIII.—Each Court shall from time to time fix the rates to be allowed for the custody and maintenance of the various descriptions of live-stock with reference to seasons and local circumstances. The District Judge may make any alterations he deems fit in the rates prescribed by Courts subordinate to him. Where there are two or more Courts in the same place, the rates shall be the same for each Court.

XIV.—The officer deputed to attach moveable property should be furnished with a certificate stating the period for which the court-fee required under Rule (1), Article 4, Parts II, III, IV of the Court-fee Rules has been paid, and he shall give notice thereof to the judgment-debtor or other person at whose instance he remains in possession at the place of attachment, and if such person shall desire that the property shall remain at that place for a longer period, he shall be bound to pay into Court, in advance, the further fee as required by Rule IV.

Amount of deposit to be made by decree-holder purchasing with leave of the Court.

5. The following rules have been framed by the High Court, under section 652 of the Civil Procedure Code, regarding the amount of deposit to be made by a decree-holder purchasing with the leave of the Court: —

I.—When the amount to be paid by a decree-holder buying with the leave of the Court, and who has signified his intention of claiming a set-off, is not more than the amount due to him under the decree, and for the costs of executing it, the deposit required shall not exceed the amount of the court-fees due on the sale under clause F, Article 6, Parts II, III, and IV of the rules under the Court-fees Act, section 20, clause I.

II.—When the amount of purchase-money exceeds the amount due to the decree-holder as above, but such excess, together with the amount of court-fees due for the sale does not exceed 25 per cent. of the purchase-money,

the deposit required shall not exceed the amount of such excess and court-fees.

III.—When the excess, with or without the court-fees for the sale, is greater than 25 per cent. of the purchase-money, the full deposit of 25 per cent. shall be required as authorized by section 306.

IV.—Whenever the amount due as court-fees for the sale of the property has been deposited under Rule I or Rule II, the Court shall, at the time of confirming the sale, direct that such sum be applied by an officer of the Court to the purchase of the necessary stamps, and shall cause the same to be attached to the proceeding containing the order of confirmation, and to be then and there properly defaced. All Judges will be held personally responsible for compliance with this order, which, if attended to at the proper time, will give no appreciable trouble.

Immoveable property.

6. Although the Board consider it unnecessary to direct that the High Court rules relating to the sale of immoveable property shall be held to be binding on Collectors, they desire to point out that the whole tendency of the certificate law is to proceed to sale only in the last resort, and to afford the judgment-debtor every reasonable opportunity of saving his property. The Board do not say that the sale of immoveable property in execution of a certificate is a proceeding which should never be resorted to; but they believe that cases will seldom occur in which the actual completion of a sale is necessary; and they are certainly of opinion that all officers should exercise the stringent powers which the Act puts into their hands in a lenient and considerate spirit.

Certificates of sale to be stamped.

7. Act I of 1879, Schedule I, Article 16, applies to all certificates of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Court or Collector or other Revenue officer. Such certificates of sale must, therefore, be duly stamped.

Orders of attachment of estates to be notified by Civil Courts to the Collector of the District concerned.

8. The circular order of the High Court, No. 2 of 10th January 1871, directs that all orders by all Civil Courts for the attachment of estates and shares of estates shall be immediately notified to the Collector of the district within which such estates or shares are situated.

It is the duty of Collectors to ascertain whether this circular order is duly complied with. If it is found that this is not the case, the Collector should address the Judge of the district, requesting him to cause the practice enjoined by the High Court to be observed in all the Courts of the district.

Section V.—Returns and Registers.

Return V.

1. The form of quarterly Return V (Appendix E) of certificate cases under Act VII (B.C.) of 1868 and Act VII (B.C.) of 1880 should be transmitted by District Officers to the Commissioners.

3A. Difficulty having been experienced in exercising a proper check over the two Registers 9 and 10 in consequence of their being kept in different offices, and also in ensuring that requisitions are promptly attended to, and that the stamps attached to such requisitions are not tampered with, the Board direct that the procedure indicated in the subjoined rules is to be strictly observed in future :—

Checks to be exercised.

(1) All requisitioning officers' Register 9 must be submitted weekly to the Collectorate; the serishtadar is to be held responsible that they are compared with Register 10 and returned without delay.

(2) Requisitions are to be addressed and sent to the Certificate Deputy Collector in a cover which he is to open. He is to have all stamps punched in his presence.

(3) Requisitioning officers are also to send lists in duplicate, showing the requisitions enclosed in the cover, with necessary details as to stamps. This list is to be compared by the Deputy Collector with the requisitions received, and he will then sign one copy and return it to the requisitioning officer as a receipt.

3-5-89.

3A "(1) Register No. 9 of all requisitioning officers must be compared with register No. 10. This comparison will be made monthly, provided that requisitions have been sent to the certificate officer during the previous month. The sherishtadar will be held responsible that the comparison is made quickly, and register No. 9 returned without delay to the office from which it was received. When requisitions are sent to sub-divisional officers who exercise the powers of a certificate officer, the comparison will be made in the Sub-divisional Office." 3-1-90.

Registers.

2. The necessity of organising the system on which the mass of business under the Act is carried on, as between the different branches of the Collectorate, has led to the establishment of three registers in the Certificate Department, which are to be known as Nos. 9, 10, and 11 (Appendix F).

3. It will be observed that Register 9 is a register of requisitions, and will be kept up by the Requiring* Officers, while Register 10 is a register of certificates, and will be kept up by the Certificate Officer. In all respects they are distinct and separate from one another. Every certificate being entered in the Requiring Officer's register before it is made over to the Certificate Deputy Collector, this register will afford an efficient check that no certificate is omitted from Register 10. The existence of this register will enable the Requiring Officer to keep up a persistent and regular system of requisition upon the Certificate Deputy Collector, until the demand of the certificate is realised. The value of the Register 9 as a system of check is therefore based on the assumption that the offices of the Requiring Officer and of the Certificate Deputy Collector are entirely separate. Under the system in force these offices are, as a rule, to be separate. If, however, in any case, as in Chittagong (under the arrangement sanctioned for khas management) the functions of requisition and of execution of the certificate are unavoidably exercised by the same officer, both the registers prescribed must be kept up by that officer, and it will be necessary for him to exercise a special personal vigilance to see that the check which these registers effect on two departments under his own control is duly maintained.

4. The third register, 11, is intended solely as a check on the Nizarut. It must therefore not be kept up by the Nazir, nor in his office. The Nazir's signature will, however, be obtained in it as processes are made over to him, and returned by him, after service.

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* NOTE.—Each Requiring Officer on the district staff is to keep a separate register in form 9.

APPENDIX A.

[*See Section I, rule* 1.]

List of demands falling under sections 5 *and* 7 *of Act VII (B.C.) of* 1880.

Description of demand.	Act by which it is declared realizable as an arrear of revenue.
I.—Under Section V.	
(a) Clause 1	
Balance of sale proceeds remaining after deduction of expenses of sale being insufficient to liquidate the arrears of revenue due from an estate or tenure	.. ..
(b) Clause 2.	
Arrears of revenue due from a farmer	....
II.—Under Section VII.	
Article 1.	
Fines imposed by the Board on persons failing to attend in person when required	Regulation II of 1793, section 33.
Fines imposed on proprietors, farmers &c omitting or refusing to attend or cause their agents to attend with accounts information, &c, required by Collectors with sanction of the Board in cases connected with their public duty and not expressly provided for by any Regulation in force	Regulation XII of 1817, section 32. Act XX of 1848, section 1.
Sums adjudged by Collectors in favour of patwaris and fines	Regulation XII of 1817, section 36.
Fines imposed by the Board on persons not attending or not producing accounts before Collector, &c, engaged in resumption enquiries	Regulation II of 1819, section 13.
Fines imposed by the Board on persons resisting such proceedings	Regulation II of 1819, section 14.
Specific sums of money, or costs or damages awarded by Collectors engaged in enquiries under Regulation VII of 1822	Regulation VII of 1822, section 23 clause 3.
Fines imposed on proprietors, farmers &c, neglecting to provide supplies boats, temporary bridges, &c, for troops upon Collector's requisition	Regulation VI of 1825, section 4.
Charges of witnesses and other costs adjudged by Collectors enquiring in course of settlement proceedings into validity of grants claimed to be held revenue free or at fixed revenue, or exercising judicial powers under the Regulations *then* in force ...	Regulation IX of 1825, section 5, clause 10.
Money recoverable from public accountants and their sureties on account of loss or defalcation in their accounts ...	Act XII of 1850, section 4.
Opium advances	Act XIII of 1857, section 16.
The difference between a bid not made good and the proceeds of a second sale necessary in consequence .	Act XI of 1859, section 23.
Income-tax . .	Act II of 1886, section 30(1).
Recovery of fees under the Elephant Preservation Act	Act VI of 1879, section 10.
Sums due from officers under the Court of Wards and their sureties	Act IX (B C.) of 1879, section 46.
Amounts payable in respect of improved or reclaimed lands under drainage scheme	Act VI (B.C.) of 1880, sections 26 and 38.
Article 2.	
Money due from sureties of a farmer	.....
Article 3.	
Zemindari dák cess	Act VIII (B.C.) of 1862, section 9.
Payment of full court-fee on probate or letters-of administration and certificates in cases where less value is paid in the first instance	Act VII of 1870 (The Court-fees Act), sections 19G, 19H, and the note to paragraph 12 of schedule 1.
Famine loans	Act IV (B C) of 1875, section 1.
Survey charges	Act V (B C) of 1875, section 57.
Irrigation rates	Act III (B C.) of 1876, sections 42, 73, and 85
Land registration fees, fines, &c.	Act VII (B C) of 1876, section 82.
Fees, fines, cost, &c, in partition cases	Act VIII (B C) of 1876, section 138.
Sums due from excise farmers	Act VII (B.C.) of 1878, section 36.

Description of demand.	Act by which it is declared realizable as an arrear of revenue.
Article 4.	
Money due from a farmer of tolls under the Canals Act of 1864 or his sureties	.....
Article 5.	
Arrears due from farmers of ferries	.....
Article 6.	
Arrears of revenue or rent payable to the Secretary of State for India in Council from a ryot or from any other person holding any interest in land, pasturage, forest rights, fisheries, and the like	.....
Article 7.	
Arrears of rent due from estates under the Court of Wards, &c.	.....
Article 8.	
Any sum payable to a public officer of Government and contracted for as payable under the Act by a written and duly registered instrument	.....
Article 9.	
Any fee, duty, tax, or other demand which by any Act passed after Act VII (B.C.) of 1880 shall be declared to be recoverable under the provisions of Act VII (B.C.) of 1880, section 7, clause 9, viz.—	
(1) Arrear of road and public works cesses	Act IX (B.C.) of 1880, section 98.
(2) Cesses recoverable from shareholders in estates by their registered co-sharers	Act IX (B.C.) of 1880, section 49.
(3) Interest on arrear of rent due to wards' estates and costs incurred in executing certificate	Act III (B.C.) of 1881, section 10.
(4) Expenses incurred by the Court of Wards after release of estate	Act III (B.C.) of 1881, section 11.
(5) Embankment expenses	Act II (B.C.) of 1882, section 70.
(6) Loans for Land Improvement	Act XIX of 1883, section 7.
(7) Loans to Agriculturists	Act XII of 1884, section 5.
(8) Expenses apportioned between landlord and tenants under Chapter X of the Bengal Tenancy Act	Act VIII of 1885, section 114.

APPENDIX B.

[*See Section I, rule* I.]

Extract from the Board's letter to Government, No. 267A, dated 29th April 1882.

3. At first sight it appears as if the special appointment of an officer to exercise the powers of a Collector under the Act would be to transfer from the Collector of the district the administration of one of the most important and responsible portions of a Collector's functions. But this view is more apparent than real; for the Act, as it stands, empowers a Collector to make over to any subordinate all business under the Act with one or two exceptions. The Board have examined the question in communication with some of the local officers, and the opportunity seems now a good one for considering what restrictions should be put on the exercise of such powers, whether by an officer specially appointed by the Lieutenant-Governor to exercise the functions of a Collector under the Act, or by any other subordinate of the Collector.

4. Section 12 allows any person on whom a notice of a certificate has been served under section 10 of the Act to appear before the Collector by whom such certificate has been made within the 30 days which must elapse before any

compulsory action is taken, and there to deny his liability to pay the whole or, any part of the amount for which such certificate has been made and filed against him. Under section 15 the Collector may refer any such petition of objection to any Deputy Collector, &c., subordinate to him, who shall "hear and determine such petition accordingly." This is really the most important and responsible function under the Act, and no special order from the Lieutenant-Governor is required to enable a Collector to make over the discharge of it to a subordinate (subject of course to the ordinary checks of appeal to and control by the Collector).

5. It should be clearly understood that the special appointment by the Lieutenant-Governor, which is the subject of this letter, will not have the effect of conferring on the officer specially appointed any powers or functions preceding the actual making of the certificate. The power of determining that the sum to be recovered is due to the Collector will generally be exercised by another officer under powers vested in him irrespectively of this Act. For instance, the fine to be recovered will have been imposed in a settlement proceeding by the Settlement Officer, or in a proceeding under the Cess Act by the Deputy Collector in charge of the Cess Department, or the balance of rent due from a tenant in a Government estate which is to be recovered by compulsory means will have been determined by the Deputy Collector who is more immediately in charge of the management of Government estates. Each of these officers will notify the due so determined to the officer specially appointed by the "Lieutenant-Governor to exercise the power of a Collector under the Act," with a view to its being recovered by the certificate procedure.

6. The only substantial point for the exercise of this officer's discretion at this stage will be whether the amount so determined to be due shall be recovered by the certificate procedure or not; if so, he will "make under his hand," that is, sign the certificate which will start that procedure, and in regard to which the notice under section 10 will issue. Then, if within the 30 days which must elapse before any compulsory action can be taken on that notice, an objection is presented by the person against whom the certificate has been made denying his liability to pay the whole or any part of the amount for which such certificate has been made and filed against him, the officer in question, in virtue of his special appointment to exercise the functions of a Collector, will have power either to hear and determine the objection himself under section 12 *et seq.*, without special reference from the Collector, or to refer it for hearing and determination to any subordinate of the Collector. As pointed out in paragraph 4 above, this officer or any other subordinate of the Collector is already empowered by the Act to hear and dispose of such a petition of objection if referred to him for disposal by the Collector.

7. When once the certificate is made, any subordinate of the Collector may under section 19, exercise all powers necessary to its execution, with the one reservation specified in the section.

8. Thus the special appointment by the Lieutenant-Governor will have the effect of conferring on the officer appointed no powers not already vested in him by law, except those specified in article 1 of the annexed draft instructions; and the question is, how far restrictions should be imposed on the exercise of these powers by specially appointed officers generally.

9. The annexed list embraces, it is believed, all the classes of cases in which a Collector is called upon to make certificates. It will be seen that in many of them the "making of a certificate under his hand" for the recovery of the demand is the mere formulation of an order already passed by competent authority in the exercise of legal powers. Such are the items specified under article 2, clause (*b*), section 8 of the Act—"fines imposed or costs, charges and expenses, damages, duties, or fees adjudged by a public officer under the provisions of any law for the time being in force."

In such cases there can be no hesitation in vesting a subordinate of the Collector with powers to make the certificates.

10. In these cases there can be no room for objection under section 12 as to whether the amount is due or not, nor as to whether the person named is liable; the order of the authority who imposed the fine (and who has himself moved for its realisation by certificate) in itself creates the liability. In such cases the necessity which the law imposes of allowing 30 days to expire after the issue of notice of certificate under section 10 before process of attachment or any other compulsory

process issues is so much grace allowed to the person who is liable to pay without attaining any other object than to give him time for payment.

11. In almost all other classes of cases, such as arrears of revenue remaining due after the sale of an estate, and in such cases as those marginally noted, the fact that the amount is due from the person named will have been ascertained and pronounced upon by the responsible revenue officer in charge of a particular branch of the business of a Collector's office on the best information which the records of the office afford.

Arrears of rent from tenants on Government estates, sums due from farmers of ferries, or of excise, or of tolls; arrears of different taxes and cesses; irrigation rates, embankment expenses, famine loans, fees authorised by law on land registration, and other revenue proceedings; court-fees on probates or letters-of-administration.

In cases of this nature a copy of the certificate and notice of the certificate is issued to the person named therein, and he is invited to come forward under section 12 with any objection he may have, denying his liability, in default of which he is warned that process will issue after 30 days for the realisation of the amount as an undisputed due, the debtor being prohibited in the meantime from alienating his immoveable property. The real deficulty and responsibility in such cases begins when an objection under section 12 is presented.

12. The accompanying draft of a set of instructions has been prepared by the Board. In accordance with those views, it is believed that, under the restrictions therein imposed, an officer might with safety be specially appointed by the Lieutenant-Governor in each district of these provinces to exercise the functions of a Collector under the Act, with the result that the Collector personally would be relieved of a mass of detail work which might be done as well by his subordinate, and that he would at the same time be enabled to retain his hold on the really important points in the administration of the Act.

APPENDIX C.

[*See Section III, rule* 21.]

Post Card Warning.

Take notice that you are liable to Government for the sum of Rs. on account of († .) If you do not pay this amount within seven days, a certificate will be made against you, and the cost of executing the same will be levied from you according to law.

APPENDIX D.

[*See Section IV, rule* 1.]

Circular Order No. 3 *of January* 1887.

1. The Board's Circular No. 1 for August 1883 is cancelled.

2. The attention of all officers who are entrusted with the working of the Public Demands Recovery Act, 1880, is drawn to the judgment passed by the High Court on the 30th April 1886, in the case noted in the margin. The portions of this judgment, which bear upon the present question, are extracted below.

MR. REYNOLDS.

Mitter and Norris, J. J.

Sadhusarun Singh and another, plaintiffs ... ... *Appellants*

Versus

Panchdeo Lall and others, defendants ... ... *Respondents*

I. L. R. 14. Calcutta, 1.

3. In this case a share of an estate belonging to the plaintiffs was sold on the 16th September 1881, in execution of a certificate for arrears of road and public works cesses due up to the September kist of 1880, and was purchased by

† Here enter the nature of the demand, as cesses water-rate, embankment dues, &c.

the defendants. The plaintiffs applied to the Collector to set aside the sale, and their application was rejected. They appealed to the Commissioner, who rejected the appeal; and they then brought a suit in the Civil Court, which was dismissed by the Subordinate Judge, but was remanded by the High Court on the grounds set forth in their decision.

4. The learned Judges, after pointing out that a certificate does not become absolute, unless the notice under section 10 is shewn to have been served, proceed as follows to explain the law regarding appeals from sales of immoveable property held in execution of certificates:—

"Supposing that there are material irregularities in publishing or conducting a sale held in execution of a certificate issued under Act VII (B.C.) of 1880, and supposing such irregularities have caused substantial injury to the owner of the property sold, what are his remedies? Is he entitled to proceed under section 311 of the Civil Procedure Code, or section 2, Act VII (B.C.) of 1868, by way of appeal to the Revenue Commissioner against such sale? or is he entitled to pursue both these remedies?

There is no express provision in Act VII of 1880, or the cognate Acts, that the judgment-debtor in a case like this would be entitled to pursue both remedies. It would also create very great confusion, and might result in conflicting orders of concurrent courts, if it were held that both remedies are open to him. Section 19 of Act VII (B.C.) of 1880 says that all the practice and procedure provided by the said Code of Civil Procedure in respect of sales in execution of decrees, &c., shall apply to every execution issued to enforce a certificate. It seems to us that the words "in respect of sales in execution of decrees" do not include any proceedings instituted after the sale, for setting it aside. We think therefore that only the provisions of the Procedure Code up to the stage at which the auction sale is held apply to an execution issued to enforce a certificate, and therefore the provisions of sections 311 and 312 are not applicable. * * * * We are of opinion that the only remedy of a judgment-debtor, whose property has been sold in execution of a certificate issued under Act VII (B.C.) of 1880, and who has sustained substantial injury by reason of a material irregularity in publishing or conducting the sale, is by way of an appeal under section 2 of Act VII of 1868, Bengal Council * * * * * We think that by the force of section 2, Act VII of 1880, the provisions of section 2, Act VII (B.C.) of 1868, became applicable to a sale under an execution issued upon a certificate made under Act VII of 1880 * * * * The effect of this section is that Act XI of 1859 and Act VII of 1868, and Act VII of 1880 are to be considered as if the provisions contained in them were contained in one Act, so far as such construction is consistent with the terms of the last mentioned Act. That being so, the sale in this case may be considered as a sale under Act VII of 1868, within section 2 of that Act. The appeal under that section against the sale therefore lies to the Revenue Commissioner. Similarly, all sales under Act VII of 1880 would become final in the manner and at the time provided in section 27 of Act XI of 1859."

5. In accordance with this decision of the High Court, the following procedure should be observed by District Collectors and other officers vested with the powers of a Collector under the Public Demands Recovery Act:—

(1). When, in execution of a certificate, immoveable property is sold by an Assistant or Deputy Collector empowered to perform the functions of a Collector under Act VII (B.C.) of 1880, no appeal against the sale lies to the Collector of the district.

(2). The officer holding the sale has no power to set the sale aside.

(3). The remedy of any person aggrieved by such sale is by appeal to the Commissioner under section 2, Act VII (B.C.) of 1868.

(4). The order of the Commissioner on such appeal is final.

(5). The Commissioner may refer the case to the Board of Revenue under section 26, Act XI of 1859.

(6). As soon as a sale becomes final, the Collector must give the purchaser a certificate under section 28, Act XI of 1859, and must deliver possession under section 29.

(7). The purchase-money must be applied in accordance with section 31, Act XI of 1859.

APPENDIX E.

[*See Section V, rule* 1.]

Quarterly Return V.—Certificates filed under Act VII (B.C.) of 1880.

Description of Certificate.	Number pending from last quarter.	Number filed during quarter.	Total.	Disposed of during quarter.				Pending.			Number of appeals to Commissioner or Collector instituted in quarter, section 16	Number of civil suits brought in quarter to cancel certificates, section 8 (*b*).	Amount covered by certificates made during the quarter.	Remarks.
				Cancelled on objection.	Struck off.	Fully discharged.	Total.	*More than six months.*	Less than six months.	Total, column 4, less column 8.				
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
1. Of all kinds under section 5, Act VII (B.C.) of 1880														
2. To realise arrears of rent due to Government, clause (6), section 7														
3. To realise embankment dues, section 70, Act II (B.C.) of 1882 ...														
4. To realise water-rates, &c., Act III (B.C.) of 1876														
5. To realise cesses, Act IX (B.C.) of 1880														
6. To realize Court of Wards' demands, clause (7), section 7, Act VII (B.C.) of 1880														
7. Other certificates made under section 7														
Total ...														

N.B.—Pending cases shown in column 9 must be explained in the Explanation sheet.

The 188 *District Officer.*

EXPLANATION SHEET FOR RETURN V.

Table.	Heading.	Column.	EXPLANATION.

APPENDIX F.

[*See Section V, rule* 2.]

Register 9.—*Requisitions for Certificates under Act VII (B.C.) of* 1880, (*to be kept by each Requiring Deputy Collector or other public officer issuing the notice under section* 9 *of the Act.**)

1	2	3	4			5	6	7	8	9	10
Serial number.	Nature of claim.	Name and address of defaulter.	Amount due.			Date on which requisition is made to the Certificate Officer. (Initials of Certificate Officer.)	Date on which petition of objection, if any, is received by the Requiring Officer from Certificate Officer for disposal.† (Initials of Requiring Officer.)	Date of disposal of petition.	Date of return of petition with connected file to Certificate Officer.	Date of final disposal of certificate with note of the manner in which disposed of (whether payment or item struck off as irrecoverable).	REMARKS.
			Rs.	A.	P						

* If the Requiring Officer is not a Deputy Collector, columns 6, 7, and 8 will of course remain blank.

† *See* rules 9 and 10, Section II of this Part of this Manual.

Register 10.—*Certificates made under the Public Demands Recovery Act, VII (B.C.) of* 1880, *to be kept by the Certificate Officer.*

Note (*a*).—If separate volumes of the register are kept for Road Cess Wards, &c., it will not be necessary to describe the nature of the claim in column 5, as "Road Cess for the kist of.....&c.," but it will suffice merely to mention the particular kist or instalment. In the volume for Miscellaneous cases, however, the particular department should be mentioned in this column.

Note (*b*).—Process fees or costs under section 14 of the Act should be shown separately in sub-column (*a*) of column 13.

Note (*c*).—Delays due to appeals should be noted in column 15.

1. Serial number of the year.
2. Serial number of requisition in Register 9 or name of other district from which received.
3. Date of receipt by Certificate Officer.
4. Name and address of debtor.
5. Nature of claim.
6. Amount of claim.
7. Date of certificate.
8. Section of Act under which certificate is made.
9. Petitions under section 12—
   - (*a*) Date of receipt.
   - (*b*) Date of forwarding to officer by whom petitions are heard.
   - (*c*) Date of return from such officer.
10. Amount of claim decreed on objection, with costs, if any, allowed under section 14.
11. Amount of claim, with costs, if any, under order of Appellate Court.
12. Notice under section 10 and subsequent processes—
   - (*a*) Date of issue.
   - (*b*) Kind of process, *i.e.*, whether notice under section 10 or warrant of attachment, &c.
13. Realizations—
   - (*a*) Amount.
   - (*b*) Number of chalan.
   - (*c*) Date.
14. Entry of satisfaction by Collector.
15. Remarks.

7-12-91.

[*See Section V, rule 2.*]

Register 10.—*Certificates made under Act VII (B.C.) of* 1880, *(to be kept by the Certificate Officer.)*

1	2	3	4	5			6	7	8	9	10			11	12			13			14			15	16	17
Serial number.	Date of receipt by Certificate Officer of notice from officer other than a Collector under section 9 (*if any*).	Name and address of debtor.	Nature of claim.	Amount of claim.			Date of certificate.	Section of Act under which certificate is made.	Date of receipt of petition under section 12.	Date of Certificate Officer's order forwarding the petition to the Requiring Officer for disposal.	Amount of claim, including costs, if any, ordered under section 14.			Date of receipt of order in appeal.	Amount of claim, including costs, if any, under appellate order.			Amount of claim satisfied by payment on issue of the notice of certificate under section 10, without further compulsory process.			Amount realised by any further process.			Date and number of the treasury challan.	Entry of satisfaction by Collector, *vide* section 22 (*b*).	REMARKS.
				Rs.	A.	P.					Rs.	A.	P.		Rs.	A	P.	Rs.	A.	P.	Rs.	A.	P.			

NOTE 1. In cases of notices under section 9 of the Act, columns 1, 2, 3, 4 and 5 will be filled in from the notices, and the subsequent procedure in connection with the issue of certificates under the same section of the Act will be shewn in some or all of the columns 6 to 16.

2. In the case of other certificates issued, entries will be made in columns 3 to 16 as necessary.

3. Amounts should be entered in column 13, even though they are paid after the making and disposal of an objection under section 12.

4. The particular process, such as attachment of property, sale, &c., under which any sum entered in column 14 is realised, should be indicated.

[*See Section V, rule* 2.]

Register 11.—*Processes made over to the Nazir for service, and of orders issued to him for execution in connection with certificates filed.*

1	2	3	4	5	6
Serial number.	Number and date identifying the certificate case with entry in Register 41A.	Character of process made over to the Nazir [and date when returnable].	Date of issue to Nazir [with his initials].	Date of return by Nazir [with his initials].	Remarks.

N.B.—This register being intended as a check on the Nazir's department, must not be left in the hands of the Nazarut establishment.

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